

# GENERAL CONDITIONS OF THE CONTRACT

DEPARTMENT OF ADMINISTRATION

STATE OF MONTANA

## 1. Article I - Contract Documents

### 1.1. Contract Documents

1.1.1. The Contract Documents consist of the Invitation For Bids, Instruction to Bidders, Contract, General Conditions, Supplementary General Conditions, Specifications for Work, Drawings, Bid, all Addenda issued prior to bidding, and any Change Orders.

1.1.2. Should conflicts arise between or among the various sections of the Contract Documents including the interpretation of such, the following order of governing is established:

Agreement Between Contractor and Owner  
Addenda  
Proposal  
Supplementary General Conditions  
General Conditions  
Specifications for Work  
Drawings  
Instructions to Bidders  
Invitation to Bid

### 1.2. The Work

The Work comprises the completed construction required by the Contract Documents and includes all labor, material, equipment, and services necessary to complete the construction.

### 1.3. Intent

The intent of the Contract Documents is to include all items necessary for the proper execution and completion of the Work. The Contract Documents are complimentary and what is required by one shall be as binding as if required by all.

## 2. Article II - Owner

### 2.1. Definition

The Owner is the State of Montana acting by and through its Administrator, Architecture & Engineering Division, Department of Administration.

## 2.2. Owner's Right to Award Separate Contracts

The Owner reserves the right to award separate contracts in connection with other portions of the project or other work on the site under these or similar conditions of the contract.

## 2.3. Owner's Right to Lien Releases

The Owner reserves the right to require the Contractor, all sub-contractors and material suppliers to provide lien releases at any time. The Owner reserves the right to withhold progress payments until such lien releases are received for all work for which prior progress payments have been made. Upon the Owner's demand for lien releases (either verbally or written), the Contractor, all sub-contractors and material suppliers shall provide such releases with every pay request until Final Acceptance of the Project.

## 2.4. Owner's Right to Stop Work

If the Contractor fails to carry out the work in accordance with the Contract Documents or fails to correct defective work, the Owner may, seven (7) days after written notice to the Contractor and his surety, order the Contractor to stop the work until such deficiencies are corrected or may terminate the Contractor's contract and take possession of all materials and equipment and proceed to complete the work. All funds due the Contractor according to the contract shall be used to pay for completing the work. Funds remaining after completion of the work shall be paid to the Contractor. If additional funds are needed to complete the work, the Contractor shall pay the difference.

## 2.5. Owner's Right To Personnel

The Owner reserves the right to have the Contractor and/or subcontractors remove person(s) and/or personnel from any and all work on the project with cause but without cost to the Owner. Such requests from the Owner may be made verbally or in writing and may be done directly or indirectly through the Architect/Engineer or on-site representative. Cause may be, but not limited to, any of the following: incompetence, poor workmanship, poor scheduling abilities, poor coordination, disruptive to the facility or others, poor management, cause delay or delays, disruptive to the project, will not strictly adhere to facility procedures and project requirements either willfully or unknowingly, insubordination, drug/alcohol use, possession of contraband, belligerent acts or actions, etc. The Contractor shall provide replacement person(s) and/or personnel acceptable to the Owner at no cost to the Owner.

## 2.6. Termination of Contract

The Owner, without cause and for its convenience, may terminate all or a portion of the work under this Contract. The Owner shall provide written notice stating to the Contractor the effective time and date of the termination. Upon this notice the Contractor shall cease all work, itemize his expense to date including a reasonable profit on these expenses and submit his statement to the

Owner for approval. This payment shall constitute final settlement of the terminated contract or portion of work terminated.

#### 2.7. Access to Site

The Owner and his authorized representative will have access to the work at all times and the Contractor shall provide facilities for such access.

### 3. Article III - Contractor

#### 3.1. Definition

The Contractor is the person, firm or corporation identified in the Standard Form of Contract Between Contractor and Owner or his authorized representative.

#### 3.2. Existing Conditions

By executing the Contract, the Contractor certifies that he has visited the site, familiarized himself with the local conditions under which the work is to be performed and correlated his observations with the requirements of the Contract Documents.

#### 3.3. Supervision

The Contractor shall supervise and direct the work and shall be responsible for the acts, omissions and discipline of his employees, subcontractors and their employees and other persons performing any of the work under a contract, whether written or verbal, with the Contractor.

#### 3.4. Taxes, Permits, Fees

The Contractor shall secure and pay for all permits and inspections, give all notices, pay all taxes and fees and comply with all laws, ordinances, rules, regulations and lawful orders bearing on the performance of the work.

#### 3.5. Limits of the Work

The Contractor shall confine his operations to the immediate vicinity of the work and shall not extend any operations beyond the limits of the work without the Owner's permission. This shall include, but is not limited to, storage of materials, prefabrication of components, offices, employee break areas, loading and unloading areas.

#### 3.6. Shop Drawings and Approvals

The contractor shall review, approve, and submit to the Architect/Engineer ALL shop drawings, schedules, samples and approvals required by the Contract Documents *within thirty (30)*

*calendar days of being issued the Notice to Proceed* unless extended by the Architect/Engineer. Approval of shop drawings, schedules and samples by the Architect/Engineer shall not relieve the Contractor of the responsibility of the requirements of the Contract Documents unless specifically approved in writing by the Architect/Engineer. No work requiring the submittal of shop drawings, schedules, samples or approvals shall be commenced until such submittals have been approved by the Architect/ Engineer.

### 3.7. Substitution of Material

All material and equipment specified by manufacturer's name, brand or number is so identified for the purpose of establishing a standard. Any material or equipment which will perform the duties imposed by the Contract Documents which are of the same quality and standard will be considered. All such substitutions will be submitted to the Architect/Engineer with sufficient data for comparison and no substitutions shall be purchased or installed without written approval from the Architect/Engineer.

### 3.8. "Or Equal" Specifications

It shall be the responsibility of the Contractor to provide data or other proof that products substituted under the "or equal" provisions of the product specifications are, in fact, of equal quality, appearance, and function. Material or equipment with a "prior approved equal" status must be approved by the Architect/Engineer prior to the bid opening.

### 3.9. Time of Submittal

All substitutions requiring prior approval shall be submitted at least ten (10) days prior to bid opening. All other substitutions shall be submitted not more than twenty (20) days after the date of the "Notice to Proceed".

### 3.10. Demolition and Debris

The Contractor shall at all times keep the premises free from the accumulation of rubbish and other waste material. Unless otherwise specified, all material and equipment removed during demolition and not specified to be reused or salvaged by the Owner, shall become property of the Contractor and shall be removed from the premises promptly.

## 4. Article IV - Work

### 4.1. Labor and Materials

Unless otherwise specified, the Contractor shall provide and pay for all labor, materials, equipment, tools, utilities, transportation, temporary construction and services for the proper execution and completion of the work.

#### 4.2. Material and Equipment

Unless otherwise specified, all material and equipment provided by the Contract Documents shall be new and in good condition. All workmanship shall be of good quality and in keeping with the standard of the respective trades.

#### 4.3. Labor and Wages

- 4.3.1. In any contract in excess of \$25,000 let for state work, the Contractor (including all subcontractors at any level or tier in the project) shall give preference to the employment of bona fide Montana residents in the performance of the work and shall pay the standard prevailing rate of wages, including fringe benefits for health and welfare and pension contributions and travel allowance provisions in effect and applicable to the county or locality in which the work is being performed. (18-2-403, Montana Code Annotated)
- 4.3.2. On any state construction project in excess of \$25,000 funded by state or federal funds, except a project partially funded with federal aid money from the United States Department of Transportation or where residency preference laws are specifically prohibited by federal law and to which the state is a signatory to the construction contract, at least 50% of the workers as defined by the Department of Labor & Industry must be bona fide Montana residents. (18-2-401, 18-2-402, Montana Code Annotated)
- 4.3.3. The Commissioner of The Montana Department of Labor and Industry has established the standard prevailing rate of wages in accordance with 18-2-401 and 18-2-402, Montana Code Annotated. A copy of the Rates, entitled "State of Montana, Prevailing Wage Rates", is bound herein. The Commissioner of the Montana Department of Labor and Industry has established the resident requirements in accordance with 18-2-409, Montana Code Annotated. The Contractor (including all subcontractors at any level or tier in the project) shall direct any and all questions concerning prevailing wage and Montana resident issues for all aspects of the Work to the Montana Department of Labor and Industry.
- 4.3.4. If the contract is in excess of \$25,000, the Contractor and all subcontractors, at any tier or level in the project, as determined by the Montana Department of Labor and Industry, shall classify all workers in the project in accordance with the AState of Montana, Prevailing Wage Rates. In the event the Contractor is unable to classify a worker in accordance with these rates he shall contact the Department of Labor and Industry, Employment Relations Division, P.O. Box 1728, Helena, Montana 59620, (406) 444-5600 for a determination of the prevailing wage rate to be paid.
- 4.3.5. The Contractor and all subcontractors, at any tier or level in the project, shall be responsible for obtaining wage rates for all workers in the project prior to their performing any work on the project. The Contractor is required to pay and insure that its subcontractors, fabricators and others pay the prevailing wage determined by the DOLI, insofar as required by Title 18 of the MCA and the pertinent rules and standards of DOLI.

- 4.3.6. The Owner will not, and is not responsible to, determine who classifies as a subcontractor, sub-subcontractor, materialman, supplier, or any other person involved in any aspect of the project at any tier or level. All such determinations shall be the sole responsibility of the Contractor, subcontractors, sub-subcontractors, materialmen, suppliers and others involved in the project at any tier or level. The Contractor, subcontractors, sub-subcontractors, materialmen, suppliers and others involved in the project shall indemnify and hold harmless the Owner from all claims, damages, attorneys' fees, and/or awards involving prevailing wage or Montana resident issues. Any changes to wages or penalties for failure to pay the correct wages will be the sole responsibility of the Contractor and/or his subcontractors and no further charges will be made to the Owner. If the parties mutually agree or an arbitrator or court determines that any change in wages is due and any part is attributable to the Owner, the Owner's sole liability shall be for the amount of wages ordered only and not for other expenses, charges, penalties, overhead, profit or other mark-ups.
- 4.3.7. In accordance with 18-2-422(1) MCA, each job classification's standard prevailing wage rate, including fringe benefits, that the contractors and employers shall pay during construction of the project is included herein by both reference to the Department of Labor & Industry's "Building" or "Heavy/Highway" schedules and as part of these Contract Documents.
- 4.3.8. The Contractor and every employer, including all subcontractors at any tier or level, is required by 18-2-422(2) MCA to maintain payroll records in a manner readily capable of being certified for submission under 18-2-423 MCA, for a period of not less than 3 years after the contractor's or employer's completion of work on the project or the final acceptance by the Owner, whichever is later.
- 4.3.9. Each contractor is required by 18-2-422(3) MCA to post in a visible and accessible location a statement of all wages and fringe benefits in compliance with 18-2-423.

#### 4.4. Hiring Preference and Montana Products Preference

- 4.4.1. Products manufactured or produced in the State of Montana by Montana industry and labor shall be preferred for use in this project and in all materials, supplies, and equipment procured if such products, materials, equipment, and supplies are comparable in price and quality as prescribed in 18-1-112, Montana Code Annotated.
- 4.4.2. For state construction projects within an Indian reservation, hiring preference will be given to Indian residents of the reservation who have substantially equal qualifications for any position. This preference will apply unless federal law specifically prohibits residency preference.

#### 4.5. Protection of Persons and Property

- 4.5.1. Safety and Protection: The Contractor shall take all reasonable precautions to prevent injury or loss to the work, adjacent property, the public and all employees on the work or other persons affected thereby.
- 4.5.2. Barricades and Signs: The Contractor shall erect and maintain, warning signs, barricades and other reasonable safeguards for safety and protection as required by law and the conditions and progress of the work.
- 4.5.3. Emergencies: In the event of any emergency affecting the safety of persons or property, the Contractor shall act, at his discretion, to prevent any damage or loss. Any claim by the Contractor for additional compensation or extension of time shall be submitted to the Owner for consideration as provided by Article V.

#### 4.6. Warranty

The warranty period shall be defined as commencing with Substantial Completion (with each Substantial Completion if there is more than one) of the project, or any portion thereof, and continuing for one (1) calendar year from the date of Final Acceptance of the entire project by the Owner. The Contractor shall and does hereby warrant and/or guarantee all work, workmanship and materials for a period of not less than one year from date of final acceptance, unless otherwise specified in the Contract Documents. The date of Final Acceptance shall be the date of the Architect's signature on the final request for payment unless otherwise agreed upon in writing by the Owner, Architect and Contractor. If, during the period between Substantial Completion and Final Acceptance or within one (1) year after the date of Final Acceptance, any of the work is found to be defective or not in accordance with the Contract Documents, the Contractor shall, upon receiving written notice from the Architect/Engineer or Owner, correct any work beginning within seven (7) calendar days of said written notice. Should the Contractor fail to respond to the written notice within the designated time, the Owner may correct the work at the expense of the Contractor. All manufacturer, product and supplier warranties are in addition to this Contractor warranty.

#### 4.7. Weather Days

If inclement or adverse weather conditions are the basis for a claim for additional time, such claim shall be documented by data substantiating that weather conditions were abnormal for the period of time, could not have been reasonably anticipated and had an adverse effect on the scheduled construction per the following conditions:

- .1 Inclement or adverse weather shall not be a prima facie reason for the granting of an extension of time, and the Contractor shall make every effort to continue work under prevailing conditions. The Owner may grant an extension of time if an unavoidable delay occurs as a result of inclement/severe/adverse weather and such shall then be classified as a "Delay Day". Any and all delay days granted by the Owner are and shall be non-compensable in any manner

or form. The Contractor shall comply with the notice requirements concerning instances of inclement/severe/adverse weather before the Owner will consider a time extension. Each day of inclement/severe/adverse weather shall be considered a separate instance or event and as such, shall be subject to the notice requirement of 21 calendar days of the occurrence of the event.

- .2 An “inclement”, “severe”, or “adverse” weather delay day is defined as a day on which the Contractor is prevented by weather or conditions caused by weather resulting immediately therefrom, which directly impact the current controlling critical-path operation or operations, and which prevent the Contractor from proceeding with at least 75% of the normal labor and equipment force engaged on such critical path operation or operations for at least 60% of the total daily time being currently spent on the controlling operation or operations.
- .3 The Contractor shall consider normal/typical/seasonal weather days and conditions caused by normal/typical/seasonal weather days for the location of the Work in the planning and scheduling of the Work to ensure completion within the Contract Time. No time extensions will be granted for the Contractor’s failure to consider and account for such weather days and conditions caused by such weather for the Contract Time in which the Work is to be accomplished.
- .4 A “normal”, “typical”, or “seasonal” weather day shall be defined as weather that can be reasonably anticipated to occur at the location of the Work for each particular month involved in the Contract Time. Each month involved shall not be considered individually as it relates to claims for additional time due to inclement/adverse/severe weather but shall consider the entire Contract Time as it compares to normal/typical/seasonal weather which is reasonably anticipated to occur. Normal/typical/seasonal weather days shall be based upon U.S. National Weather Service climatic data for the location of the Work or the nearest location where such data is available.
- .5 The Contractor is solely responsible to document, prepare and present all data and justification for claiming a weather delay day. Any and all claims for weather delay days shall be tied directly to the current critical-path operation or operations on the day of the instance or event which shall be delineated and described on the Critical-Path Schedule and shall be provided with any and all claims. The Contractor is solely responsible to indicate and document why the weather delay day(s) claimed are beyond those weather days which are reasonably anticipated to occur for the Contract Time. Incomplete or inaccurate claims, as determined by the Architect or Owner, may be returned without consideration or comment.

## 5. Article V - Changes in Work

### 5.1. Change Order

The Owner may order changes in the work with the contract sum and/or contract time being adjusted accordingly by a written Change Order. A Change Order will be on a form required and



provided by the Owner and will be the only authorized adjustment to the contract sum and contract time allowed after the execution of the Owner/Contractor Agreement.

- 5.1.1. No changes to the work by the Contractor will be authorized until written approval of the Change Order has been received from the Owner.
- 5.1.2. Contractor shall provide a complete breakdown of all costs relating to each Change Order. The breakdown shall include hourly rates and unit costs as well as a complete description of all work involved. Any and all changes or adjustments to the Contract Time requested or claimed by the Contractor as a result of a Change Order, shall require documentation and justification for the adjustment by a Critical Path Method analysis of the Contractor's most recent Critical Path Schedule in use prior to the change. Changes which affect or concern activities containing float or slack time (i.e. not on the critical path) and which can be accomplished within such float or slack time, shall not result in an increase in the Contract Time.
- 5.1.3. The cost or credit to the Owner resulting from a change in the Work shall be determined as follows:
  - .1 mutual acceptance of a lump sum properly itemized and supported by sufficient substantiating data to permit evaluation;
  - .2 unit prices stated in the Contract Documents or subsequently agreed upon;
  - .3 cost to be determined in a manner agreed upon by the parties and a mutually acceptable fixed or percentage fee; or
  - .4 as determined by the Architect.
- 5.1.4. Allowances for overhead and profit are not included in the determination of the cost or credit to the Owner and shall be limited to the following upon determination of the cost of the change: 5% allowance for overhead and a 10% allowance for profit. The allowances for overhead and for profit are limited to the percentages as specified herein unless they are determined to be unreasonable by the Architect (not the Contractor).
- 5.1.5. The Contractor's proposed increase or decrease in cost shall be limited to:
  - .1 costs of labor, as determined by the Prevailing Wage Rates bound herein;
  - .2 costs of materials, supplies, and equipment, including cost of transportation, whether incorporated or consumed;
  - .3 rental costs of machinery and equipment, exclusive of hand tools, whether rented from the Contractor or others;
  - .4 costs of premiums for all bonds and insurance, permit fees, and sales, use or similar taxes related to the Work; and
  - .5 additional costs of supervision and field office personnel directly attributable to the change.

- 5.1.6. The Contractor shall not submit any Change Order, response to requested cost proposals, or requested changes which are incomplete and do not contain full breakdown and supporting documentation in the following three areas:
- .1 Direct costs (only those listed in Subparagraph 5.1.5 are allowable).
  - .2 Indirect costs (limited as percentage on each Change Order Subparagraph 5.1.4)
  - .3 Consequential items (e.g. time extensions, credits, logic, reasonableness) for the change.
- 5.1.7. Any Change Order, responses to requested proposals, or requested changes submitted by the Contractor which, in the opinion of the Architect, are incomplete, may be rejected and returned to the Contractor without comment. It is the responsibility of and incumbent upon the Contractor to ensure and confirm that all Change Orders, responses to requested proposals, or requested changes are complete prior to submission.
- 5.1.8. Overhead, applicable to all areas and sections of the Contract Documents, means “Indirect Costs” as referenced in Subparagraph 5.1.6.2. Indirect costs are inclusive of, but not limited to, the following: home office overhead; off-site supervision; change order and/or proposal preparation, design, research, negotiation and associated travel; effects of disruption and dilution of management and supervision whether on or off-site; time delays; coordination of trades; postage and shipping; and, effective increase in guaranty and warranty durations. Indirect costs applicable to any and all changes in the work, either through Change Order or Construction Change Directive, are limited to the percentage allowance for overhead in Subparagraph 5.1.4.
- 5.1.9. Any and all changes or adjustments to the Contract Time requested or claimed by the Contractor as a result of a Construction Change Directive, shall require documentation and justification for the adjustment by a Critical Path Method analysis of the Contractor’s most recent Schedule in use prior to the change. Changes which affect or concern activities containing float or slack time (i.e. not on the critical path) and which can be accomplished within such float or slack time, shall not result in an increase in the Contract Time.
- 5.1.10. If the Contractor does not respond or disagrees with the method for adjustment in the Contract Sum in writing within seven (7) calendar days, the method and the adjustment made shall be determined by the Architect on the basis of reasonable expenditures and/or savings of those performing the Work directly attributable to the change including, in the case of an increase in the Contract Sum, an allowance for overhead and profit as listed under Subparagraph 5.1.4.
- 5.1.11. Supervision means on-site, field supervision and not home office overhead, off-site management or off-site supervision.

5.1.12. Labor means those persons engaged in construction occupations as defined in Montana Prevailing Wage Rates for Building Construction or Heavy/Highway as bound in the Contract Documents and does not include design, engineering, superintendence, management, on-site field supervision, home office or other off-site management, off-site supervision, office or clerical work.

5.1.13. All Change Orders shall be signed by the Contractor before submittal to the Architect/Engineer. Approval by the Contractor's Surety and Surety's Licensed Agent is also required if the cumulative Change Orders exceed ten percent (10%) of the original contract sum.

## 5.2. Change Directive

A Change Directive is a written order prepared by the Architect/Engineer and signed by the Owner and Architect/Engineer, directing a change in the Work. The Owner may, by Change Directive and without invalidating the Contract, order changes in the Work within the general scope of the Contract, consisting of additions, deletions or other revisions. The Contract Sum and/or Contract Time may be adjusted. If the Contractor believes that the change affects the Contract Sum or Time, he shall notify the Architect/Engineer within three (3) working days and shall separately record all labor, equipment and material costs in a separate account and shall submit daily records of the same as they are incorporated into the work deemed to be a change directive. If the Contractor does not respond, any and all adjustments to the Contract Sum or Time shall be made by the Architect per Paragraph 5.1.3.4.

## 6. Article VI - Payments and Completion

### 6.1. Contract Sum

The Owner shall pay the Contractor the amount stated in the Agreement and the amount of all authorized and approved Change Orders for the performance of the work under the Contract Documents.

### 6.2. Initial Submittal

Prior to the first application for payment, the Contractor shall submit the following information on the appropriate forms:

6.2.1. Schedule of Amounts for Contract Payment (Form 100): This form shall contain a breakdown of the labor, material and other costs associated with the various portions of the work and shall be the basis for the progress payments to the Contractor.

6.2.2. Project/Progress Schedule: The Contractor shall prepare a progress schedule in a form that is acceptable to both the Architect/Engineer and the Owner. The Schedule shall show the estimated progress of the entire project through the individual time periods allowed for

completion of each discipline/phase including, but not limited to, time for submittals, earthwork, foundations, structural, mechanical, electrical, insulation, interior finishes, etc.

### 6.3. Progress Payments

- 6.3.1. Periodic Estimates for Partial Payment shall be on a form provided by the Owner (Form 101) and submitted to the Architect/Engineer for payment by the Owner. Payment shall be requested for the labor and material incorporated in the work to date and for materials suitably stored, less the aggregate of previous payments. The Owner will pay 95% of the amount due the Contractor on account of progress payments unless the Contractor is not performing in accordance with all provisions of the Contract Documents. In which case, the Owner reserves the right to increase the amount held as retainage to whatever level deemed appropriate by the Owner.
- 6.3.2. Each and every Periodic Estimate for Partial Payment shall be accompanied by a current Project Schedule showing the percent complete, progress to date, project work and projected time to complete the work all activities. The percent complete and minor schedule changes, including additions of activities, changes to sequences of activities and significant changes in activity demands must be shown by a revised Schedule. A written report providing details about the changes and what actions are anticipated to get the work completed in the contractual time period. *If no Schedule (or revised Schedule) is provided the Architect/Engineer and/or Owner may return the pay request, or hold it, and will not pay for any portion of the Work until the appropriate Schedule, indicating all changes, revisions and updates, is provided.*
- 6.3.3. The Contractor, by submission of any partial pay request, certifies that every claim for partial payment is correct, true and just in all respects and that payment or credit had not previously been received. The contractor further warrants and certifies, by submission of any partial pay request, that all previous work for which payment has been received is free and clear of all liens, claims, security interests or encumbrances in favor of the Contractor, subcontractors, material suppliers or other persons or entities and does release the Owner from such.
- 6.3.4. Progress payments do not constitute official acceptance of any portion of the work.
- 6.3.5. In compliance with 15-50-206 MCA, the Contractor will have 1% of his gross receipts withheld by the Owner from all payments due. Each subcontractor who performs work greater than \$5,000, shall have 1% of its gross receipts withheld by the Contractor. The Contractor shall notify the Department of Revenue on the department's prescribed forms.
- 6.3.6. The Contractor may submit obligations/securities in a form specified in 18-1-301 Montana Code Annotated (MCA) to be held by a Financial Institution in lieu of retainage by the Owner. The Owner will establish the amount which would otherwise be held as retainage.

Should the Contractor choose to submit obligations/securities in lieu of retainage, the Owner will require the Financial Institution to execute the Owner's ACCOUNT AGREEMENT FOR DEPOSIT OF OBLIGATIONS OTHER THAN RETAINAGE (Form 120) prior to submission of any obligations/securities in accordance with 18-1-302 MCA. The Contractor must extend the opportunity to participate in all obligations/securities in lieu of retainage on a pro rata basis to all subcontractors involved in the project and shall be solely responsible for the management and administration of same. The Owner assumes no liability or responsibility from or to the Contractor or Subcontractors regarding the latter's participation.

#### 6.4. Time of Commencement and Completion Date

6.4.1. Work must be started on the date set forth by the Owner in a written "Notice to Proceed" and not before.

6.4.1.1. Work on must be substantially complete within **NUMBER** ( ) consecutive calendar days after the date set forth in the Notice to Proceed.

#### 6.5. Liquidated Damages

Payment to the Owner for delay in performance of the contract: The Contractor agrees to pay the Owner by reason of the Contractor's delay in performance of this contract in a sum of **AMOUNT AND NO/100 DOLLARS (\$ )** FOR EACH CALENDAR DAY that the work contemplated hereunder remains uncompleted unaccepted beyond the time allowed in the contract. Payment for the additional charges shall be made by deduction from partial and final payments to the Contractor or from retainage or securities held by the Owner. No charges shall be made for any time extension granted by the Owner.

#### 6.6. Substantial Completion

6.6.1. When the Contractor considers the work complete, he shall notify the Architect/Engineer and request a substantial completion inspection.

6.6.2. Prior to the inspection the Contractor shall complete the final clean-up of the project site which, unless otherwise stated in the Contract Documents, shall consist of:

6.6.2.1. Removal of all debris and waste.

6.6.2.2. Removal of all stains, smears, marks of any kind from all surfaces including existing surfaces if said damage is the result of the work.

6.6.2.3. Removal of all temporary structure and barricades.

6.6.3. If, during the inspection by the Architect/Engineer, any items are found to be incomplete, incorrect or in other ways not in compliance with the contract documents, the Contractor

shall correct all such deficiencies within 30 days of the inspection date.

- 6.6.4. When the Work or designated portion thereof is substantially complete, the Architect will prepare a Certificate of Substantial Completion which shall establish the date of Substantial Completion and which shall establish responsibilities of the Owner and Contractor for security, maintenance, heat, utilities, damage to the Work and insurance. After issuance of the Certificate of Substantial Completion, the Contractor shall finish and complete all remaining items within thirty (30) calendar days of the date on the Certificate. The Architect shall identify and fix the time for completion of specific items which may be excluded from the thirty (30) calendar day time limit. Failure to complete any items within the specified time frames may be deemed by the Owner as default of the contract on the part of the Contractor.

#### 6.7. Final Acceptance and Payment

- 6.7.1. When the work is fully completed in accordance with the Contract Documents, the Contractor shall submit a final payment request, for 100% of the contract amount, including all approved contract Change Orders, on the appropriate form.
- 6.7.2. Final payment shall not be due until the Contractor has provided the Owner with an "Affidavit on Behalf of Contractor", and "Consent of Surety Company to Final Payment" forms.
- 6.7.3. The making of final payment will not relieve the Contractor from claims arising from the failure of the work to comply with the requirements of the Contract Documents. The warranty period shall commence with Substantial Completion and shall extend one (1) year from the date of Final Acceptance.

### 7. Article VII - Insurance

#### 7.1. Insurance, General

The Contractor shall maintain for the duration of the contract, at its cost and expense, insurance against claims for injuries to persons or damages to property, including contractual liability, which may arise from or in connection with the performance of the work by the Contractor, its agents, employees, representatives, assigns, or subcontractors. The Contractor is responsible for all deductibles regardless of policy or level of coverage.

#### 7.2. Hold Harmless and Indemnification

The Contractor agrees that it will defend, protect, indemnify and save harmless the State of Montana and the Owner against and from all claims, liabilities, demands, causes of action, judgements (including costs and reasonable attorneys' fees), and losses from any cause whatever

(including patent, trademark and copyright infringement). This includes any suits, claims, actions, losses, costs, damages of any kind, including the State and Owner's legal expenses, arising out of, in connection with, or incidental to the Contract, but does not include any such suits, claims, actions, losses, costs or damages which are solely the result of the negligent acts, actions, losses, costs, or damages which are solely the result of the negligent acts, omissions or misconduct of the State or Owner if they do not arise out of, depend upon or relate to a negligent act, omission or misconduct of the Contractor in whole or in part.

### 7.3. Insurance Requirements

Contractor's Insurance: **insurance required under all sections herein shall be in effect for the duration of the contract, which extends through the warranty period.** Insurance required herein shall be provided by insurance policies issued only by insurance companies currently authorized to do business in the state of Montana. No Contractor or Sub-contractor shall commence work under this contract until all required insurance has been obtained. During the term of this contract, the Contractor shall, not less than thirty days prior to the expiration date of any policy for which a certificate of insurance is required, deliver to the Owner a certificate of insurance with respect to the renewal insurance policy. The Contractor shall furnish one copy of insurance certificates of insurance herein required, which shall specifically set forth evidence of all coverage required by these contract documents and which shall be signed by authorized representatives of the insurance company or companies evidencing that insurance as required herein is in force and will not be canceled, limited or restricted without thirty days' written notice by certified mail to the contractor and the Owner. The Contractor shall furnish to the Owner copies of any endorsements that are subsequently issued amending coverage or limits. Additionally, all certificates shall include the project name and A/E project number.

### 7.4. Certificates of Insurance and Endorsements

All certificates of insurance and the additional insured **endorsements** are to be received by the state prior to issuance of the Notice to Proceed. The contractor is responsible to ensure that all policies and coverages contain the necessary endorsements for the State being listed as an additional insured. The state reserves the right to require complete copies of all insurance policies at any time to verify coverage. The contractor shall notify the state within 30 days of any material change in coverage.

### 7.5. Workers' Compensation Insurance

The Contractor shall carry **Workers' Compensation Insurance**. Such Workers' Compensation Insurance shall protect the Contractor from claims made by his own employees, the employees of any Sub-contractor, and also claims made by anyone directly or indirectly employed by the Contractor or Sub-contractor. The Contractor shall require each Sub-contractor similarly to provide Workers' Compensation Insurance.

#### 7.6. Commercial General and Automobile Liability Insurance

Each Contractor shall carry occupancy coverage **Commercial General Liability Insurance** including coverage for premises; operations; independent contractor's protective; products and completed operations; broad form property damage and comprehensive automobile liability insurance with not less than the following limits of liability:

\$1,000,000 per occurrence; aggregate limit of \$2,000,000

The **Commercial General and Automobile Liability Insurance** shall provide coverage for both bodily injury, including accidental death and property damage which may arise out of the work under this contract, or operations incidental thereto, whether such work and operations be by the Contractor or by any Subcontractor or by anyone directly or indirectly employed by the Contractor or by Sub-contractor, or by anyone for whose acts any of them may be liable. The Contractor shall maintain liability insurance required herein for a period of not less than one year after final payment or anytime the Contractor goes on to the location of the project.

- 7.6.1. The Contractor's liability insurance policies shall list the STATE OF MONTANA as an additional insured. The STATE OF MONTANA includes its officers, elected and appointed officials, employees and volunteers and political subdivisions thereof. Should the Contractor not be able list the state as an additional insured, the Contractor shall purchase a per occurrence Owner's/Contractor's Protective Policy (OCP) with the STATE OF MONTANA as the insured party in the same occurrence and aggregate limits as that indicated above for the Contractor's Commercial General Liability Policy.
- 7.6.2. Property damage liability insurance shall be written without any exclusion for injury to or destruction of any building, structure, wires, conduits, pipes, or other property above or below the surface of the ground arising out of the blasting, explosion, pile driving, excavation, filling, grading or from the moving, shoring, underpinning, raising, or demolition of any building or structure or structural support thereof.
- 7.6.3. The Contractor's insurance coverage shall be PRIMARY insurance as respects the state, its officers, elected and appointed officials, employees and volunteers. Any insurance or self-insurance maintained by the state, its officers, elected and appointed officials, employees and volunteers shall be excess of the Contractor's insurance and shall not contribute to it.

#### 7.7. Property Insurance (All-Risk)

The Contractor shall purchase and maintain Builder's Risk/Installation insurance on a special causes of loss form ("all-risk") upon the entire work, including vandalism and malicious mischief and theft of material stored off-site, on-site or in transit, currently authorized at the site to the full insurable value thereof. Such insurance shall be in a company or companies authorized to do



business in the state of Montana. This insurance shall include the interests of the Owner, the Contractor, Sub-contractors and sub-subcontractors in the work and shall include "All-Risk" Insurance for physical loss or damage including, without duplication of coverage, fire, leakage, steam boilers, pressure vessels, oil or gasoline tanks, theft, vandalism and malicious mischief, and other such risks. If not covered under all risk insurance or otherwise provided in the contract documents, the Contractor shall effect and maintain similar property insurance on portions of the work, products or materials stored off the site or in transit when such portions of the work are to be included in an application for payment. Additionally, all certificates shall include the project name and A/E project number.

7.7.1. The form of policy for this coverage shall be "completed value of the work" for all new structures and "cost of the work for all renovations" of existing structures.

7.7.2. If by the terms of this insurance any mandatory deductibles are required, the Contractor shall be responsible for payment of the amount of all deductibles in the event of a paid claim.

## 8. Article VIII- Miscellaneous Provisions

### 8.1. Construction Contractor Registration

The Contractor is required to be registered with the Department of Labor & Industry under 39-9-201 and 39-9-204 MCA PRIOR to the Contract being executed by the State of Montana. A bidder must demonstrate that it has registered or promises that it will register immediately upon notice of award. If the prevailing bidder cannot or does not register in time for the Owner to execute the Contract within the fifteen (15) day time period of the notice of award the State may award to next lowest responsible bidder who meets this requirement. The Owner cannot execute a contract for construction nor issue a Notice to Proceed to a Contractor who is not registered (39-9-401(a) MCA).

### 8.2. Equal Employment Opportunity

All hiring and other employment practices shall be non-discriminatory, based on merit and qualifications without regard to race, color, religion, creed, political ideas, sex, age, marital status, physical or mental handicap, or national origin.

### 8.3. Assignment

8.3.1. The Contractor shall not assign the whole or any part of this contract or any monies due or to become due, hereunder without written consent of the Owner. In case the Contractor assigns all or any part of any monies due or to become due under this contract, the

instrument of assignment shall contain a clause substantially to the effect that it is agreed that the right of the assignee in and to any monies due or to become due to the contractor shall be subject to prior claims of all persons, firms, and corporations for services rendered or materials supplied for the performance of the work called for in this contract.

- 8.3.2. The Contractor and all subcontractors hereby assign to the State of Montana any and all claims or causes of action for any antitrust law violations or damages arising therefrom as to goods, materials and services purchased under the terms of this agreement, and any change order that may result from this agreement. This assignment is made on behalf of the Contractor and all subcontractors which may be hired or contracted with by the Contractor to furnish goods, materials or services required under the terms of this agreement.

#### 8.4. Schedule of Work

The Contractor shall coordinate his operation in order that the Owner will have use of the existing facilities at all times during the normal working hours and interfere minimally with the Owner's operation.

#### 9. Article IX - Arbitration

- 9.1. All disputes between the parties to this agreement arising out of or in connection with the contract documents shall be submitted for arbitration. However, the Contractor and the Owner agree to waive all disputes or claims for consequential damages arising out of or relating to this contract. This mutual waiver includes loss of use, income, profit, financing, business and reputation, attorney's fees relating to consequential damages, productivity, principle office expenses, personnel expenses, loss of profit or anticipated profit from other work. This mutual waiver is applicable, without limitation, to all consequential damages as a result of either party's termination but does not preclude or limit liquidated damages. If arbitration is selected by the Owner, the Owner shall also select the number of arbitrators and the manner of arbitration, which shall be either: (1) arbitration according to the rules of the American Arbitration Association then in use within the construction industry; or (2) referral to one or more arbitrators mutually agreed upon by the parties.
- 9.2. Any claim arising out of or related to the contract shall, as a condition precedent to arbitration, be subject to mediation unless the parties mutually agree otherwise. The parties shall share the costs and expenses of the mediator equally.
- 9.3. When a written decision of the Architect/Engineer states that (1) the decision is final but subject to arbitration and (2) a demand for arbitration of a Claim covered by such decision must be made within 30 days after the date on which the party making the demand receives the final written decision, then failure to demand arbitration within said 30 days' period shall result in the Architect's/Engineer's decision becoming final and binding upon the Owner and Contractor.

- 9.4. The arbitration proceeding shall be conducted in accordance with Title 27, Chapter 5, MCA. Prior to the arbitration hearing, each party to the controversy shall be subject to the discovery provisions of the Montana Rules of Civil Procedure, Rules 26-37, inclusive. Any dispute regarding discovery may be submitted to the district court in the county in which the construction was performed, or the First Judicial District, Lewis and Clark County.
- 9.5. In responding to a claim brought by a Contractor, the Owner shall have a minimum of 45 days in which to respond to a revised claim prior to the arbitration hearing.
- 9.6. The parties agree that the costs of the arbitrator(s) compensation and expenses shall be borne equally. The parties further agree that the arbitrator(s) shall have the authority to award to either party some or all of the other costs and expenses involved (including attorneys' fees).

## 10. Article X - Architect/Engineer

### 10.1. Definition

The Architect/Engineer is:

***NAME OF FIRM***  
***ADDRESS***  
***CITY STATE ZIP***  
***PHONE FAX***

### 10.2. Responsibilities

The Architect/Engineer will be the interpreter of the requirements of the Contract Documents and the judge of the performance thereunder. All interpretations and judgement will be consistent with the intent of the Contract Documents and will not show partiality to either the Owner or the Contractor.

### 10.3. Access to Site

The Architect/Engineer is the authorized representative of the Owner and will have access to the Work at all times.

## 11. Article XI – Record Keeping

Payrolls and basic records pertaining to the project shall be kept on a generally recognized accounting basis and shall be available to the Owner, Legislative Auditor, the Legislative Fiscal Analyst or his

authorized representative at mutually convenient times. Accounting records shall be kept by the contractor for a period of three years after completion and acceptance of the project by the Owner.